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DIGEST OF WATER POLLUTION CONTROL LEGISLATION ... INDIANA

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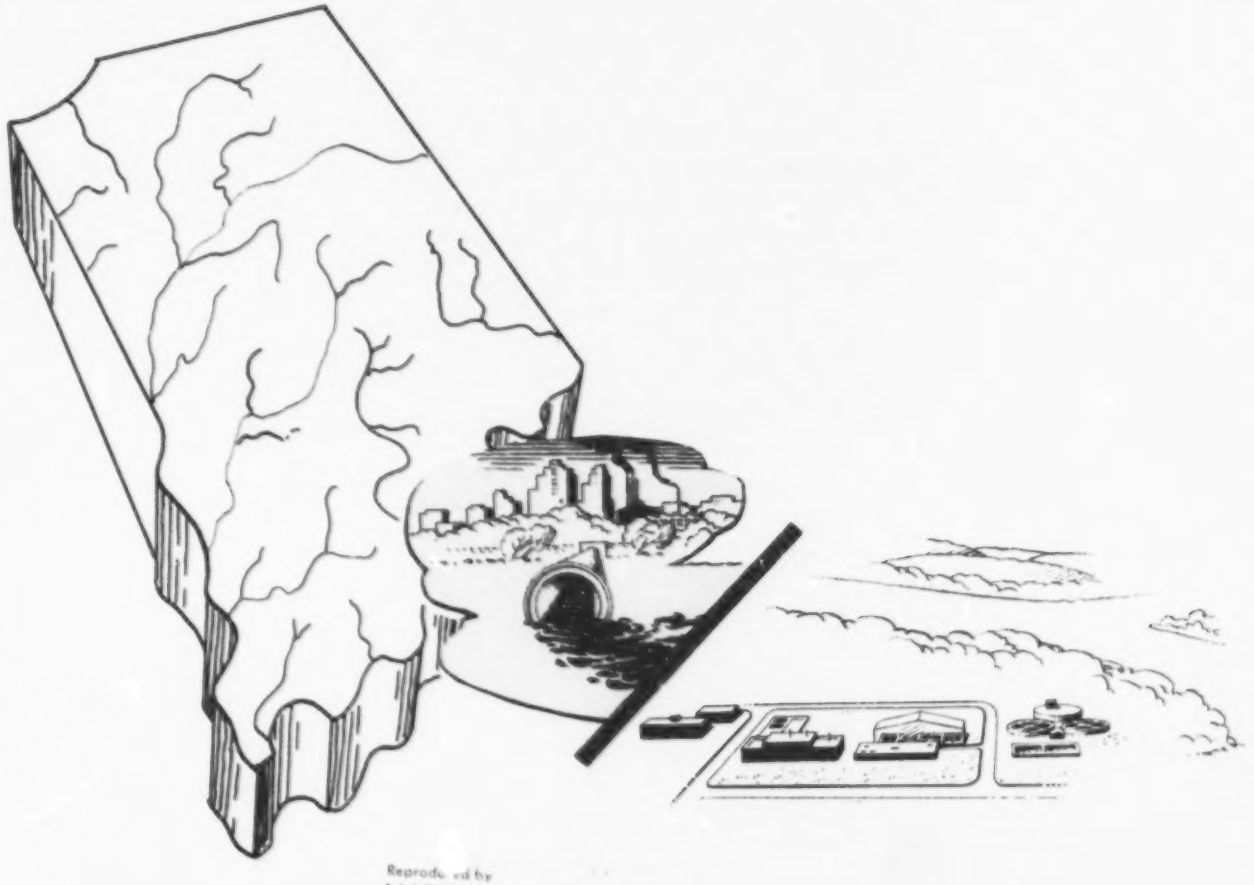

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U. S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Public Health Service

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Section 3 of the Federal Water Pollution Control Act (33 U.S.C. 466b) directs the Public Health Service to "encourage the enactment of improved and, so far as practicable, uniform State laws relating to the prevention and control of water pollution."

This Digest is one of a series prepared by the Public Health Service as a service to the States and others interested in these objectives. Cooperation of State officials in the preparation of these digests is gratefully acknowledged.

September 1958

DIGEST OF INDIANA WATER POLLUTION CONTROL LEGISLATION

I. GENERAL STATEMENT

In Indiana both the Stream Pollution Control Board and the State Board of Health have functions relating to the control of water pollution.

The Stream Pollution Control Board is authorized to control and prevent pollution in the waters of the State (Sec. 68-520). 1/

The Stream Pollution Control Board is designated by statute as the Water Pollution Agency for the State for all purposes of the Federal Act, including obtaining the benefits of the Federal Act. It is empowered to obtain funds under the Federal Act; to approve projects for which application for loans or grants under the Federal Act is made by any municipality or agency of the State or by an interstate agency; to participate in proceedings under the Federal Act; to give consent on behalf of the State to requests by the Federal Security Administrator (Secretary of Health, Education and Welfare) to the Attorney General of the United States for the bringing of suit for abatement of pollution; and to consent to the joinder as a defendant in such suit of any person who is alleged to be contributing to the pollution, abatement of which is sought in such suit (Secs. 68-536, 68-537).

Anyone who is ordered by the Stream Pollution Control Board to control, treat, dispose or cease discharging industrial and sanitary wastes into State waters, is empowered to condemn the necessary property in order to comply with the Board's order (1957 Cum. Supp., sec. 68-539).

The Act defines water and waters to mean and include lakes, rivers, streams, drainage ditches, roadside ditches, underground water and any and all other surface and sub-surface water courses, underground reservoirs

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1/ Citations in this digest refer to Burns Indiana Statutes Annotated, and the 1957 Cumulative Supplement thereto, unless otherwise indicated.

and basins within the jurisdiction of the State; provided that it does not mean any privately-owned pond; and provided also, that it does not mean in any way to affect the administration and enforcement of the drainage and ditch laws of the State (1957 Cum. Supp., sec. 68-532).

The functions of the State Board of Health relate primarily to public water supplies and sewage treatment works (Secs. 35-2903-2913).

II. ADMINISTRATIVE ORGANIZATION

A. The Stream Pollution Control Board

1. Composition and organization

The Board is part of the Division of Health and Preventive Medicine within the Department of Health. It is composed of the Secretary of the State Board of Health, the Director of the Department of Conservation, the Lieutenant-Governor, and four members appointed by the Governor. No more than two of the appointed members may be of the same political party. The Board selects a Chairman at its first regular meeting in each calendar year. The Board holds at least six regular meetings each calendar year, and may hold such special meetings as are called by the Chairman, or by two members by written notice to the other members. The Secretary of the State Board of Health designates a qualified graduate sanitary engineer as Technical Secretary of the Board. Four members of the Board constitute a quorum (1957 Cum. Supp., sec. 60-2031; secs. 68-517-519).

2. Powers and duties

a) General authority

The Board has authority to control and prevent pollution in the waters of the State (Sec. 68-520).

b) Setting standards of water purity

The Board is authorized to determine what qualities of water indicate a polluted condition in any of the streams of the State that is

deleterious to the public health, the prosecution of any industry or lawful occupation, any agricultural, floricultural, or horticultural pursuit, any livestock industry, the use of any such waters for domestic animals; or that impairs the lawful use of any such waters by the State or any political subdivision thereof, person, corporation, or other legal entity; or injuriously affects any fish life or any beneficial animal or vegetable life in said waters. Any such determination made by the Board must be filed of record by the Board (Sec. 68-523).

c) Approval of plans and specifications

All plans and specifications for the abatement or correction of any polluted condition must be approved by the Board. The Board, on request, shall advise and consult with any person planning any correction or prevention of any polluted condition of any waters of the State (Sec. 68-526).

d) Enforcement

Whenever the Board determines that anyone is about to dispose into any of the waters of the State any matter that will cause or contribute to a polluted condition of such waters, it serves a notice on the alleged offender by registered mail, with return receipt requested, giving such party at least 5 days notice of the time and place of the hearing on the matter, and setting out sufficient facts therein to advise the party of the issue involved (Secs. 68-525, 63-3006).

All hearings which the Board holds and all notices, orders and determinations which it issues, as well as appeals from such orders and determinations, must be conducted under and comply with the provisions of the Administrative Adjudication and Court Review Act (Secs. 63-3001-3024).

e) Cooperation with other public and private agencies

The Board is authorized to cooperate with the Surgeon General and other agencies of the Federal Government, other States, interstate agencies and other interested parties in all matters relating to water pollution, including the development of programs for eliminating or reducing pollution and improving the sanitary condition of waters (Sec. 68-537(a)).

f) Administrative powers

The Board is authorized to hold hearings, compel the attendance of witnesses and to administer oaths (Sec. 68-525; sec. 63-3005). It is authorized to make regulations and orders restricting the polluting content of any waste material and polluting substance discharged or sought to be discharged into any of the waters of the State (Sec. 68-523). It also has the power to require the sealing of mines, oil and gas wells, brine wells or any other subterranean strata causing or contributing to or about to cause or contribute to a polluted condition of the waters of the State (Sec. 68-521). The Board or its agents are given the right to enter at all reasonable times in or upon any private or public property for the purpose of inspecting and investigating conditions relating to the pollution of any waters of the State. The Board is further authorized to call upon State officers, boards, school or university and employees thereof for assistance deemed necessary in carrying out the purposes of the Act (Sec. 68-522).

3. Preservation of existing rights and remedies

The Act is not to be construed as repealing any existing law relating to pollution of lakes or streams, or relating to the powers and duties of the State Board of Health, but is to be construed as auxiliary

and supplementary thereto (Sec. 68-524).

4. Severability clause

The Act contains a severability clause (Acts of Indiana, 1943, Ch. 214, sec. 19).

III. OTHER STATE AGENCIES HAVING WATER POLLUTION CONTROL FUNCTIONS

The State Board of Health is authorized to approve plans and specifications for the construction or material change in any public water supply facilities, including water purification or treatment works, before they can be constructed (Sec. 35-2903). The Board also is empowered to analyze drinking water, bottled or mineral water which is offered for sale for public consumption and shall prohibit its distribution when it shows a bacteriological or chemical content deleterious to public health (Secs. 35-2904, 35-2905). The Board also has authority to hold hearings to determine whether a public water supply is impure and dangerous to health. If it determines that the supply is impure because of improper construction, inadequate size, or inefficient management or operation, it may order that the same be made pure and safe to health and if the cause is inefficient management or operation, it may order a competent person to take charge, and such person must be approved by the Board (Sec. 35-2907). When the Board finds after hearing that a sewage treatment plant is not producing a reasonably pure effluent because of inefficient supervision or operation, and therefore makes any public water supply impure or dangerous to health or that it has polluted a watercourse, it may after hearing order that a competent person take charge of and superintend the operation of such sewage treatment plant, and such person must be approved by the Board (Sec. 35-2908). Anyone failing to comply with the order of the Board in making changes and improvements in water purification and sewage treatment works

within ten days after the expiration of the time fixed by the Board for compliance, or in case of appeal, after final judgment affirming the Board's order, becomes liable and forfeits to the State the sum of $500 to be recovered in a civil suit; and each day's delay in compliance is a separate offense (Sec. 35-2913).

The Department of Conservation (Commission) is given the authority to regulate the disposal of salt or sulphur-bearing water and waste liquids produced in the operation of any oil or gas wells. However, when such disposal results in the pollution of any water, then the Stream Pollution Control Board has jurisdiction (Sec. 46-1712).

IV. MISCELLANEOUS STATUTORY PROVISIONS RELATING TO WATER POLLUTION

It is unlawful:

(a) To cause or permit to be deposited into the waters of the State any substance which is deleterious to the public health or to the prosecution of any industry or lawful occupation in which such water may be lawfully used (Sec. 35-2901).

(b) To maliciously or mischievously put any dead animal, carcass, or part thereof, or any other putrid, or offensive substance, into, or in any manner befoul, any well, cistern, spring, brook, canal or stream of running water, or any reservoir of water-works, of which any use is or may be made for domestic purposes. Violation carries a fine and imprisonment (Sec. 10-2503).

(c) To put the carcass of any dead animal, or the offal from any slaughter-house or butcher shop, packing-house or fish-house, or any spoiled meat or spoiled fish, or any putrid animal substance, or the contents of any privy vault, into any water. Violation carries a fine (Sec. 10-2505).

(d) For anyone to discharge any explosives in any waters of the State

without a permit from the Director of the Division of Fish and Game. Violation is a misdemeanor (Sec. 11-1427).

(e) For anyone to take, catch, kill or destroy fish by means of explosives, or any substance which has a tendency to stupefy or poison fish (Sec. 11-1605).

It is a misdemeanor for anyone to permit or cause the pollution of a fresh water strata through any act which will cause salt water, highly mineralized water or otherwise contaminated water to enter it (1957 Cum. Supp., secs. 27-1301-1313).

Anyone who has suffered or is threatened with damage because of pollution of water by any other person can bring a suit to abate the pollution or threatened pollution; such suit to originate in the Superior or Circuit Court in the jurisdiction wherein the pollution occurs or is threatened (Sec. 35-2902).

V. INTERSTATE COMPACTS

Indiana is a party to the Ohio River Valley Water Sanitation Compact, relating to the control of future pollution in and abatement of existing pollution of the rivers, streams and waters in the Ohio River Basin (Sec. 68-601).